



## Final Regulation Agency Background Document

<b>Agency name</b>	Department of Taxation ("TAX")
<b>Virginia Administrative Code (VAC) citation</b>	23 VAC 10-210-910
<b>Regulation title</b>	Chapter 210 – Retail Sales and Use Tax
<b>Action title</b>	Amends Maintenance Contracts and Warranty Plans regulation section, 23 VAC 10-210-910, to reflect legislative changes.
<b>Date this document prepared</b>	May 19, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

The application of the retail sales and use tax to maintenance contracts that provide both parts and labor was amended by the 1994 General Assembly, effective January 1, 1996. This regulation is being amended to reflect this statutory change and to provide examples illustrating the tax application of this change. The regulation is also being amended to include a Definitions section. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The Tax Commissioner approved this regulatory action on October 14, 2005.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Code of Virginia § 58.1-203 provides that the “Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department.” The authority for the current regulatory action is discretionary.

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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As a result of legislation passed by the 1994 General Assembly, TAX's policy with respect to the application of the sales tax to maintenance contracts that contain both parts and labor was overturned. This regulation section must be amended to reflect this legislative change and provide examples of the new policy. TAX receives frequent inquiries as to the proper sales tax application to maintenance contract and warranty plans.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.*

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The 1994 General Assembly changed the application of the retail sales and use tax with respect to maintenance contracts that include both parts and labor. These contracts are now taxed at one-half of the total charge for the contract, as opposed to the previous policy of taxing the entire amount of the contract if parts were included. As this is the subject of frequent inquiries and audit issues, the regulation section is being amended to reflect this legislative change.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:  
1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*

- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.
- If there are no disadvantages to the public or the Commonwealth, please indicate.

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**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

No changes were made since the publication of the proposed regulation.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

TAX received no comments during the public comment period following the publication of the proposed regulation.

**All changes made in this regulatory action**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10-210-910	N/A	Current regulation does not include a Definitions section.	Regulation has been amended to include a Definitions section to define words and terms commonly used throughout the regulation.

10-210-910	N/A	Current regulation does not include examples.	Regulation has been amended to include examples to illustrate TAX's policies.
10-210-910	N/A	The current regulation states that a maintenance contract that contains both parts and labor are 100% taxable.	Previous tax policy taxed parts and labor contract at 100% of the total value of the contract regardless of the actual value of the parts. As a result of a 1994 legislative change, maintenance contract that contain both parts and labor are taxed at 50% of the total value of the contract. Taxing parts and labor contract at 50% of the value of the contract is a more equitable approach. (Senate Bill 28, Chapter 595, 1994 Acts of Assembly).

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

TAX has considered modifying the regulatory methods for small businesses. The regulatory methods follow the least intrusive and burdensome method consistent with statutory language, and could not be made less burdensome for small businesses without jeopardizing the enforcement of the tax laws.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulatory action is not expected to have an impact on family formation, stability and autonomy.